Testimony of Yale University
Submitted to the Judiciary Committee
Monday, April 1, 2013

HR 6687, An Act Concerning Certificates of Merit
SB 1154, An Act Concerning the Accidental Failure of Suit Statute

Yale University appreciates the opportunity to comment on the HB 6687, An Act Concerning Certificates of Merit, and SB 1154, An Act Concerning the Accidental Failure of Suit Statute. Both bills could affect the Yale Medical Group, an academic multispecialty group that is the clinical arm of the Yale School of Medicine. The Yale Medical Group is one of the largest academic multispecialty groups in the country, with 800 practicing physicians in more than 100 specialties and subspecialties. Yale University has serious concerns abut HB 6687 and SB 1154, and recommends that the Committee approve neither bill.

Yale is committed to delivering the highest quality care in a cost-effective manner. The University believes a well functioning medical malpractice system is a critical component of the healthcare system. It promotes quality of care and provides compensation in those instances when a provider fails to meet appropriate standards of care. A fair and consistent process for adjudicating medical malpractice claims also promotes increased access to health care by controlling what would otherwise be unnecessarily high insurance and settlement costs that make care less affordable and discourage providers from practicing in Connecticut.

Connecticut's certificate of merit statute promotes fairness in considering medical practice claims. It sets out a common sense threshold for such claims – an expert must certify that there is "a good faith belief that there has been negligence in the care or treatment of the claimant." Considering the highly technical nature of medical malpractice claims, and the cost of adjudicating them, it makes sense to require that claimants demonstrate that there is a reasonable basis for filing a case.

The qualifications of expert witnesses are critical to pre-suit review. In 2005 the General Assembly recognized that the standards were insufficiently clear, and it established objective criteria for such witnesses, requiring that an expert be a "similar provider" having the same specialty or training as the defendant. That common sense standard has been upheld by the Connecticut Supreme Court, and is an appropriate one to use in the pre-suit phase when there is no opportunity for the defendant to question the expert witness.

HB 6687 would unravel the heart of the 2005 reforms by setting a much lower standard for qualifications of experts. It would no longer require that an expert be trained in or practice in the same specialty as the defendant; this change would significantly reduce the reliability of the good faith certificate and enable meritless cases to proceed, at great cost, because a plaintiff would be able to submit the opinion of a provider who may not understand the complexities of a given specialty area of medicine when providing such opinion.

SB 1154 would amend the "accidental failure of suit" statute to include failure to comply with the rules concerning certificates of merit. The proposed statute would

provide for an automatic one-year extension when a case is dismissed for the failure of a plaintiff to enclose a proper certificate of merit. In essence, it would permit a plaintiff who failed to establish a legally sufficient foundation for a good faith belief of negligence to commence a new action within one year, regardless of whether the statute of limitations would have otherwise run. This bill, as proposed, would reward a plaintiff who fails to properly prepare a case and would undercut the good faith certificate of merit process.

Yale opposes HB 6687 and SB 1154.